IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

OP.No. 14500 of 2003(S)

OA.1761/1998 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
.....

PETITIONERS:

1. UNION OF INDIA, REPRESENTED BY THE GENERAL MANAGER, SOUTHERN RAILWAY, HEADQUARTERS OFFICE, PARK TOWN, MADRAS.

2. THE DIVISIONAL RAILWAY MANAGER, SOUTHERN RAILWAY, PALGHAT DIVISION, PALGHAT.

3. THE SENIOR DIVISIONAL PERSONNEL OFFICER, DO. DO.

BY SRI.ALEXANDER THOMAS, SC,RAILWAYS

RESPONDENTS:

1. V.K.KRISHNAN S/O. LATE RAMAN, LUGGAGE PORTER, SOUTHERN RAILWAY, CALICUT.

2. K.P.DHAVAMANI, POINTSMAN "B", SOUTHERN RAILWAY, PALGHAT.

3. S.APPACHATTY, POINTSMAN, "B", DO. DO.

4. THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH, REP. BY ITS REGISTRAR.

R2 & R3 ARE DELETED AS PER ORDER DT. 24.8.07 IN IA 11715/07

BY ADV. SRI.T.C.GOVINDA SWAMY
SRI.K.M.ANTHRU
SRI.MARTIN G.THOTTAN
SRI.MANNATIL KUMAR
R4 EX-PARTE

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 27/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.24334/2003 in OP 14500/2003

DISMISSED

27.11.2007 **SD/-K.BALAKRISHNAN NAIR, JUDGE**
SD/-K.P.BALACHANDRAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1 TRUE COPY OF THE ORDER OF CAR, ERNAKULAM BENCH DT. 21.6.2001 IN OA 1761/98

EXT. P2 TRUE COPY OF THE ORDER OF THE FULL BENCH OF CAT DT. 9.11.01

EXT. P3 TRUE COPY OF THE AFFIDAVIT DT. 27.6.02

EXT. P4 TRUE COPY OF THE JUDGMENT DT. 16.9.02 IN MA 618/02 IN RA 12/02 IN OA 1761/98 OF CAT, ERNAKULAM

RESPONDENT'S EXHIBITS:

EXT.R1(a) TRUE COPY OF OA 1761/98 WITH ALL ITS ANNEXURES

/TRUE COPY/

K.Balakrishnan Nair &
K.P.Balachandran, JJ.

O.P.No. 14500 of 2003 S

JUDGMENT

Balakrishnan Nair, J.

The petitioners are the respondents in O.A.No. 1761/98, filed before the Central Administrative Tribunal, Ernakulam Bench. It was filed by the first respondent herein, challenging his non inclusion in the panel prepared by the Railways for promotion to the post of Ticket Collector/Train Clerk in the 33.33% quota reserved for promotion from Group D categories. The applicant was a Luggage Operator in the scale of pay of Rs.775-1025. He was working in that post since 20.5.1976. Respondents 4 and 5 in the original application were initially appointed in the scale of pay of Rs.750-940. Later, they were promoted as Pointsman-B in the scale of pay of Rs.800-1150. After a

written test and an interview, the said respondents alone were included in the panel published. Going by the seniority in the Group D cadre, the applicant was senior to them. So, feeling aggrieved by his non inclusion in the panel, the original application was filed.

2. The official respondents, who are the petitioners herein, contended that the afore-mentioned two candidates were in the higher scale of pay of Rs.800-1150 and the applicant was only in the scale of pay of Rs.775-1025. So, in the Group D cadre, persons with higher scale of pay were treated as seniors. Going by the total length of service in the Group D cadre, though the applicant may be senior, he was superseded, as the afore-mentioned two candidates were in the higher scale of pay. Raising the above contentions, the Railways resisted the application.

3. The Central Administrative Tribunal, after hearing both sides, allowed the original

application by Exhibit P1 order. The impugned panel was set aside and the applicant was directed to be included in the panel at the appropriate place having regard to his seniority. The official respondents in the original application challenge the said order in this writ petition. According to them, Exhibit P1 decision runs counter to the Full Bench decision of the Central Administrative Tribunal, a copy of which is produced as Exhibit P2. They also submit that going by Rule 320 (erstwhile 321) of the Indian Railway Establishment Manual (hereinafter referred to as 'the Manual) their action in not empanelling the applicant was correct. So, they prayed for quashing Exhibit P1 impugned order of the Central Administrative Tribunal.

4. We heard the learned counsel on both sides. The learned counsel for the petitioners relied on the decision of the Apex Court in **B.Ram Mohan v. Union of India** (JT 2001(5) SC 575) and Exhibit P2

decision of the Full Bench of the Tribunal. The learned counsel for the first respondent, on the other hand, relied on the decision of the Apex Court in **M.Ramjayaram v. General Manager, South Central Railway** (1996 SCC (L&S) 890).

5. We have gone through the decisions cited by the learned counsel for the parties. No decision, other than Exhibit P2, is directly in point. It is pointed out by both sides that Exhibit P2 is already under challenge in O.P.No.7278/02. Therefore, we are not saying anything on Exhibit P2. So, we will take a decision, having regard to the facts and materials available, in this case. The Rules, which may have some relevance in this case, are Rules 180, 189 and 320 of the Indian Railway Establishment Manual. For convenience, we quote the above Rules as under:

> "**Rule 180:** Transportation (Traffic) and Commercial Deptt. - All Railway

servants in the lowest grade should be eligible for consideration for promotion to higher grades in both Transportation and Commercial branches. Applications should be invited from amongst categories eligible for promotion from both the branches. All Railway servants who apply will be considered. An ad-hoc seniority list will be prepared on the basis of length of continuous service in the grade and suitable man selected and placed on a panel for training. Systematic and adequate training and examinations or tests must precede actual promotions.

Rule 189: Promotion to higher grade in Group 'C':- (a) Railway servants in Group 'D' categories for whom no regular avenue of promotion exists 33-1-3% of the Clerks, Ticket Collectors, Train Clerks, Number Takers, Time Keepers, Fuel Checkers, Office Clerks, Typists and Stores

Clerks, etc. should be ear-marked for promotion. The quota for promotion of Group 'D' staff in the Accounts Deppts. to Group 'C' post of Accounts Clerks will be 25%. Promotion to Group 'C' will be subject to the following conditions:

xxxxx xxxxx xxxxx xxxxx

Rule 320: RELATIVE SENIORITY OF EMPLOYEES IN AN INTERMEDIATE GRADE TO DIFFERENT SENIORITY UNITS AFFECTING FOR A SELECTION/NON-SELECTION POST IN HIGHER GRADE.

When a post (selection as well as non-selection) is filled by considering staff of different seniority units, the total length of continuous service in the same or equivalent grade held by the employee shall be determining factor for assigning inter-seniority irrespective of the date of confirmation of an employee with

> lesser length of continuous service as compared to another unconfirmed employee with lesser length of continuous service. This is subject to the proviso that only non-fortuitous service should be taken into account for this purpose."

Going by Rule 180 of the Manual, we find that the seniority should be reckoned with reference to the length of service. A reasonable construction, which should be placed on the Rule, is that it should the length of service in Group D cadre. The petitioners, on the other hand, would submit that persons with higher scale of pay in Group D cadre should be treated as seniors to those in the lower scale of pay, notwithstanding the length of service. The said contention is not supported by any of the above said Rules. Further, if it is accepted, it will work out serious prejudice to the persons in the lower scale of pay with longer

service and persons with a few months service will steal a march over them, provided the seniors are not drawing a higher scale of pay, though in Group D cadre. Further, as rightly pointed out by the learned counsel for the first respondent, all the promotions in the 33.33% quota reserved will be cornered by a particular stream and others will be denied promotion. Therefore, we find nothing illegal with Exhibit P1 order of the Central Administrative Tribunal. We agree with the reasons and conclusions of the Tribunal.

In the result, the original petition fails and it is dismissed.

(K.Balakrishnan Nair, Judge)

27th November, 2007

(K.P.Balachandran, Judge)

tkv

K.Balakrishnan Nair &
K.P.Balachandran, JJ.

O.P.No.14500 of 2003

JUDGMENT

27th November, 2007